

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA)	CRIMINAL NO. 04-10343-NG
)	
v.)	
)	
HECTOR OQUENDO)	
True name: Julio Francisco Molina)	
)	

DEFENDANT HECTOR OQUENDO’S SENTENCING MEMORANDUM

Now comes defendant HECTOR OQUENDO, through counsel, and hereby submits this Memorandum in preparation for his sentencing.

I. Mr. Oquendo’s Position Regarding His Guideline Sentencing Range

As set forth in the Presentence Report (“PSR”), the Probation Officer has calculated the Guideline Sentencing Range to be 10 to 16 months¹. In arriving at this GSR, the Probation Officer contends that pursuant to U.S.S.G. § 2B1.1(a) (as contained in the November 1, 2002 Guideline Manual), the base offense level attributable to Mr. Oquendo is 6. Defendant agrees that this is the correct base offense level. The base offense level is then adjusted by four (4) points pursuant to U.S.S.G. § 2B1.1(b)(1)(C) based on the Probation Officer’s calculation that the amount of loss is greater than \$10,000.00. Finally, the base offense level is also adjusted by two (2) points for obstruction of justice, which is based on the fact that Mr. Oquendo gave a false name to the Court and Pretrial Services when initially brought in on the charges at issue. The Probation Officer then denies Mr. Oquendo a reduction for acceptance of responsibility, thereby making the total offense level 12.

¹ The Probation Officer correctly assigns Mr. Oquendo a Criminal History Category of I.

Mr. Oquendo hereby renews three (3) objections to the total offense level calculation contained in the PSR. First, Defendant objects to the two-level increase for obstruction of justice. It is defendant's position that while he misstated his true identity the first time that he appeared in Court, he informed his attorney almost immediately thereafter that he was not really Hector Oquendo². Defendant submits that he misstated his identity at the beginning of this case because he was nervous and did not understand what was happening. He did, however, inform undersigned counsel of his real name and citizenship almost immediately after his arraignment. Additionally, undersigned counsel informed the Government and Pretrial Services of Mr. Oquendo's actual identity shortly after he became aware of it. While it is true that the first time Mr. Oquendo disclosed his true identity in open court was at his Rule 11 hearing, that was certainly not the first time that Mr. Oquendo revealed that he had initially provided false information. The Rule 11 hearing was the first occasion Mr. Oquendo was in a courtroom in this case with an assumed obligation to speak truthfully.

Finally, it is defendant's position that the fact that he initially provided a false identity did not impair the ability of the Pretrial Services Department to conduct its investigation – with regard to defendant's criminal history or otherwise. Defendant has been detained since his arrest; therefore, this is not a situation where providing a false identity resulted in a defendant obtaining pre-trial release by providing fraudulent information. Further, the Government (through

² For the sake of consistency and to avoid any confusion, counsel will continue to refer to the defendant as "Hector Oquendo" as that is the name under which he was indicted.

Assistant United States Attorney Seth Berman) has known that Mr. Oquendo's true identity is Julio Francisco Molina since early in the case³.

Similarly, defendant objects to the Probation Officer's denial of a reduction to his offense level for acceptance of responsibility. As explained more fully above, Mr. Oquendo revealed his true identity to his counsel – who, in turn, revealed it to the attorney for the Government and to Pretrial Services – early on in this case. Mr. Oquendo clearly accepted responsibility in a timely manner and permitted the government to avoid preparing for trial. Mr. Oquendo has therefore fully accepted responsibility and is entitled to a reduction for that acceptance.

Finally, defendant objects to the four level increase to his base offense level pursuant to U.S.S.G. § 2B1.1(b)(1)(C). Defendant objects to the amount of loss calculated by the Probation Officer on the grounds that the loss is not \$17,966.90 just because Mitsubishi Motor Credit of America was later able to sell the car at auction for \$17,005.00. The amount of money an item sells for at a wholesale automobile auction does not represent the fair market value of the item. Rather, defendant states that the amount of loss should be less than ten thousand dollars (\$10,000.00). In furtherance of this contention, defendant submits the enclosed “blue book” listing showing the value of a 2003 Mitsubishi Eclipse Spyder GTS as \$28,267.00. The amount of the loss would therefore be \$6,204.90. Given a loss amount of less than \$10,000.00, a 2 level increase should be applied pursuant to § 2B1.1(b)(1)(B).

³ Defendant notes that he never stated that his name was “Oscar Figueroa” or “Juan David Restrepo Jiminez” – and contrary to the statement of the Probation Officer, there were not “several detention hearings” in this case.

Defendant respectfully submits, therefore, that his total offense level should actually be 6. This is based on the fact that Mr. Oquendo contends that he should be given 2 points for acceptance of responsibility. Given a total offense level of 6, and a Criminal History Category of I, it is Mr. Oquendo's position that his GSR is 0-6 months and he should be sentenced to time served.

II. Mr. Oquendo's Position Regarding Restitution

18 U.S.C. § 3663, entitled "Order of restitution," provides at subsection (B)(i) that the court shall consider the following two (2) factors in determining whether to order restitution: (I) the amount of the loss sustained by each victim as a result of the offense and (II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

In the present case, the Pre-Sentence Report accurately reflects that Mr. Oquendo's total assets are approximately \$1,500.00. As defendant has been incarcerated since December 9, 2004, his monthly cash flow has been zero for the past ten (10) months. Defendant therefore contends that he does not have the financial resources necessary to satisfy an order of restitution in the amount requested by the Probation Officer.

8 U.S.C. § 1101(a)(43) provides the following definition of "aggravated felony" at subsection (M) as "an offense that – (i.) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000.00." Should defendant be ordered to pay restitution in the amount of \$17, 966.90 (as suggested at ¶ 124), he says the sum is beyond his means to repay. He suggests a

sum of \$6,204.90 represents the actual loss in this matter, though if that amount is ordered as restitution, Mr. Oquendo still does not have the means to repay it.

Defendant contends that while deportation is a “collateral consequence” of his conviction, it is a significant consequence. Mr. Oquendo has lived in the United States since approximately 2000, and considers it his home – particularly in light of the fact that both of his children are United States citizens. Should the Court determine that a restitution order is appropriate, Defendant therefore recommends that restitution be set in the amount of \$ 6,204.90

Respectfully submitted,
HECTOR OQUENDO
By his attorneys,

/s Christie M. Charles

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Dated: October 12, 2005

128 MITSUBISHI

Trade-In	Body Type	Model No.	M.S.R.P.	Weight	Loan	Retail
11800	Coupe 2D GS	C44G	18702	2965	10625	14950
13700	Coupe 2D GT (V6)	C84H	20902	3142	12350	16125
15200	Coupe 2D GTS (V6)	C74H	23902	3241	13700	17700
15125	Convertible 2D GS Spyder	E45G	23702	3097	13625	17625
16625	Convertible 2D GT Spyder (V6)	E55H	25802	3296	14975	19225
	Convertible GTS Spyder (V6)	E75H	28182	3329		

GALANT/ECLIPSE OPTIONS

325	Add A/A Wheels (Std. Galant GTS, Eclipse)		325	375
300	Add Infinity Stereo (Std. GTS, Spyder)		300	350
450	Add Leather Seats (Std. GTS)		450	500
200	Add Power Seat (Std. GTS)		200	225
550	Add Power Sunroof (Std. GTS)		550	625
100	Add Theft Recovery System		100	125
575	Deduct W/out Automatic Trans.		575	575

2004 DIAMANTE-V6

Veh. Ident.: 6MMA(Model)P(1)4T000001 Up						
13575	Sedan 4D ES	P57	\$24939	3505	12225	16050
15200	Sedan 4D VR-X	P87	26819	3560	13700	17775
15125	Sedan 4D LS	P67	27619	3582	13925	17875
525	Add Leather Seats (Std. LS)			525	600	
100	Add Theft Recovery System			100	125	

MITSUBISHI

2003 LANCER-4 Cyl.

Veh. Ident.: JA3A(Model)E(1)31000001 Up						
7425	Sedan 4D ES	J25	\$14017	2646	6700	8125
8125	Sedan 4D LS	J35	16947	2734	7325	9925
8775	Sedan 4D O-Z Rally	J85	15747	2701	7900	10625
22275	Evolution (5 Sp1, AWD)	H85	28392	3263	20950	25075
450	Add Power Sunroof			450	500	
75	Add Theft Recovery System			75	100	
425	Deduct W/out AT (Ex. Evolution)			425	425	

2003 GALANT-4 Cyl.

Veh. Ident.: 4A3A(Model)(1)3E000001 Up						
8300	Sedan 4D DE	A36G	\$17767	3031	7475	10200
8575	Sedan 4D ES	A46G	18577	3075	7725	10475
9300	Sedan 4D ES (V6)	A46H	19997	3252	9175	12300

2003 ECLIPSE-4 Cyl.

Veh. Ident.: 4A3A(Model)(1)2E000001 Up						
11200	Sedan 4D LS (V6)	A46H	23187	3274	10100	13400
11675	Sedan 4D GTZ (V6)	A46H	24467	3295	10800	14225

2003 ECLIPSE-4 Cyl.

Veh. Ident.: 4A3A(Model)(1)3E000001 Up						
9800	Coupe 2D RS	C34G	\$18137	2810	8825	11850
10175	Coupe 2D GS	C44G	19037	2965	9175	12300
11675	Coupe 2D GT (V6)	C84H	21227	3142	10700	14125
13200	Coupe 2D GTS (V6)	C74H	24197	3241	11900	15600
13300	Convertible 2D GS Spyder	E45G	23817	3097	11975	15700
14700	Convertible 2D GT Spyder (V6)	E55H	25897	3296	13250	17175
15275	Convertible GTS Spyder (V6)	E75H	28267	3329	13750	17800

GALANT/ECLIPSE OPTIONS

275	Add A/A Wheels (Std. Galant LS/GTZ, Eclipse)		275	325
250	Add Infinity (Std. Galant LS/GTZ, GTS, Spyder)		250	300
400	Add Leather Seats (Std. Galant GTZ, GTS)		400	450
175	Add Power Seat (Std. Galant GTZ, GTS)		175	200

ADJUST FOR MILEAGE - ADJUST FOR CONDITION
NEW ENGLAND EDITION - OCTOBER 2003

MITSUBISHI 129

Trade-In	Body Type	Model No.	M.S.R.P.	Weight	Loan	Retail
500	Add Power Sunroof (Std. Galant LS/GTZ, GTS)			500	575	
75	Add Theft Recovery System			75	100	
525	Deduct W/out Automatic Trans.			525	525	

2003 DIAMANTE-V6

Veh. Ident.: 6MMA(Model)P(1)3T000001 Up						
11525	Sedan 4D ES	P57	\$25977	3439	10375	13825
13175	Sedan 4D VR-X	P87	27097	3549	11875	15625
13500	Sedan 4D LS	P67	26447	3549	12150	15975
300	Add Infinity Stereo System (Std. LS)			300	350	
475	Add Leather Seats (Std. LS)			475	550	
75	Add Theft Recovery System			75	100	

MITSUBISHI

2002 MIRAGE-4 Cyl.

Veh. Ident.: JA3A(Model)C(1)21000001 Up						
4400	Coupe 2D DE	Y11	\$11937	2183	3975	5600
5100	Coupe 2D LS	Y31	14767	2293	4600	6575

2002 LANCER-4 Cyl.

Veh. Ident.: JA3A(Model)E(1)21000001 Up						
6975	Sedan 4D ES	J25	\$13597	2646	5475	7625
6850	Sedan 4D LS	J35	15897	2734	6000	8250
7150	Sedan 4D O-Z Rally	J85	15487	2701	6450	8825

MIRAGE/LANCER OPTIONS

200	Add Aluminum Alloy Wheels (Std. Lancer LS/O-Z)		200	225
75	Add Compact Disc Player (Coupe DE)		75	100
100	Add Power Door Locks (Coupe DE)		100	125
400	Add Power Sunroof		400	450
125	Add Power Windows (Coupe DE)		125	150
75	Add Theft Recovery System		75	100
450	Deduct W/out Air Conditioning		450	450
375	Deduct W/out Automatic Trans.		375	375

2002 GALANT-4 Cyl.

Veh. Ident.: 4A3A(Model)(1)2E000001 Up						
6775	Sedan 4D DE	A36G	\$17707	3031	6100	8525
7025	Sedan 4D ES	A46G	18517	3075	6325	8800
8425	Sedan 4D ES (V6)	A46H	20417	3252	7600	10325
7900	Sedan 4D LS	A46G	21117	3108	7125	9750
9300	Sedan 4D LS (V6)	A46H	22617	3274	8375	11325

2002 ECLIPSE-4 Cyl.

Veh. Ident.: 4A3A(Model)(1)2E000001 Up						
8575	Coupe 2D RS	C34G	\$18967	2855	7725	10475
8900	Coupe 2D GS	C44G	18957	2944	8025	10825
10400	Coupe 2D GT (V6)	C84H	21147	3120	9375	12550
11825	Convertible 2D GS Spyder	E45G	23917	3042	10650	14075
13125	Convertible 2D GT Spyder (V6)	E55H	25597	3241	11825	15525

GALANT/ECLIPSE OPTIONS

225	Add A/A Wheels (Std. Galant LS/GTZ, Eclipse)		225	250
200	Add Infinity (Std. Galant LS/GTZ, Spyder)		200	225
350	Add Leather Seats (Std. Galant GTZ)		350	400
150	Add Power Seat (Std. Galant GTZ)		150	175
450	Add Power Sunroof (Std. Galant LS/GTZ)		450	500
75	Add Theft Recovery System		75	100
475	Deduct W/out Automatic Trans.		475	475

ADJUST FOR MILEAGE - ADJUST FOR CONDITION
NEW ENGLAND EDITION - OCTOBER 2003

PASSENGER CARS

PASSENGER CARS

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